FILE COPY

Office - Supreme Court, U.S.
FILED
SEP 29 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 266

ROBERT SCOTT, Petitioner

v.

CITY OF TAMPA, a Municipal Corporation

REPLY BRIEF OF PETITIONER

O. K. REAVES,
Tampa, Florida,
Attorney for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 266

ROBERT SCOTT, Petitioner,

vs.

CITY OF TAMPA, a Municipal Corporation

PETITIONER'S REPLY BRIEF

Little need be said in reply to Respondent's Brief, however, a few authorities should be added to those cited in our Main Brief in order that the Court may the more quickly see the fallacy of opposing Counsels' contention and the inapplicability of their authorities. Their argument is:

1. That the application by the State Court of laches or the statute of limitation does not present a Federal question and that the petition in this case presents nothing more.

2. That a Federal question cannot be raised for the first time in a petition for rehearing in a State Court of last resort.

These arguments overlook that the constitutional violations complained of are not by the Legislative Department in a Statute, or by the Executive or Administrative Departments of the State in some positive action sought to be set aside, but by the Judicial Department, to-wit: by the Supreme Court itself in the very opinion and judgment which Petitioner seeks to have reviewed. In such cases this Court has definitely held that the

Federal question may be raised for the first time in Petition for Rehearing in the State Supreme Court.

Saunders vs. Shaw,
244 U. S. 317, 37 Sup. Ct. 638

Brinkerhoff-Faris Trust & Savings Co. v. Hill
281 U. S. 673, 50 Sup. Ct. 451

In the Saunders case the question was raised for the first time by an assignment of error in the State Supreme Court after that court denied petition for rehearing.

This Court said:

> "The question remains whether the writ of error can be maintained. The record discloses the facts but does not disclose the claim of right under the 14th Amendment until the assignment of errors filed the day before the chief justice granted the writ. Of course ordinarily that would not be enough. But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here."

In the Brinkerhoff case the question was whether the levy of a disproportionate tax violated the Federal due process clause. The Federal question was raised for the first time on petition for rehearing. The State Supreme Court held that the taxpayer should have sought relief through the proper administrative board and having failed to do so

"it was clearly guilty of laches"

and was not entitled to relief in the Court. This Court, however, held that such holding was not consistent with a prior decision of the State Supreme Court and that by thus

> "refusing relief because of new found power of the State Tax Commission, the State transgressed the due process clause of the 14th amendment"

and that the Federal question was properly raised upon petition for rehearing in the State Supreme Court. In that case

> *"the petition was denied without opinion"*

referring to the petition for rehearing. The Brinkerhoff case seems to be a complete answer to all of counsels' arguments.

The above cited cases are not overruled, but are expressly reaffirmed and differentiated in

> *American Surety Co. v. Baldwin*
> 287 U. S. 156, 53 Sup. Ct. 98

cited by opposing Counsel. Under the peculiar facts of the Surety Co. case, the rule was not applicable.

Counsels' Brief claims that the petition for rehearing was not made a part of the record of the State Supreme Court, and that the Federal questions raised were not referred to in denying the petition. It can make no difference whether the petition for rehearing is technically a part of the record or not. Suffice it to say that the Clerk of the State Supreme Court certified said petition as part of the record. Furthermore the Federal questions in this case were raised in a separate amendment or addition to the petition for rehearing, pursuant to leave of the Florida Court especially granted, (R. 49) and the Order denying the petition is in the following words:

> "Counsel for Appellant having filed in this cause Petition for Rehearing and Amended Petition for Rehearing and having been duly considered it is ordered by the Court that both the Petition for Rehearing *and amendment are denied.*" (Emphasis ours. Record 50)

So, it is that in this case the amendment expressly raising the Federal question was made a matter of separate consideration and of separate and distinct action by the State Supreme Court. Petitioner, of course, had no means of compelling the Supreme Court to write an opinion, but it is inconceivable that an opinion would have shown more clearly the definite action of the Court upon the Federal questions than the separate filing of the petition raising those questions, the order of the Court allowing such filing, and the separate and distinct ruling of the Court thereon in denying the rehearing applied for on that ground.

Finally the point urged is extremely technical and therefore contrary to the spirit of the rules of civil procedure and the trend of recent adjudications.

> "Contracts between individuals or corporations are impaired within the meaning of the Constitution whenever the right to enforce them by legal process is taken away or materially lessened."
>
> *Lynch v. U. S.*, 292 U. S. 571-589, 78 L. ed. 1434

If it makes any difference, it is noticeable that Counsels' Brief (P. 2-3) erroneously states that the properties covered by the certificates

> "Had greatly depreciated in value or was lost for non-payment of taxes"

On the contrary, the Second Amended First Count, states on page 31 of the Record, that there was no market at any time for the lands and that the foreclosure of the certificate would have entailed large outlays by the holder, and that the foreclosure and sale when made

> "was at the highest market since the maturity of said certificate and that the amount realized on foreclosure sale was the maximum obtainable therefor at foreclosure sale"

Similar allegations are in other Counts and said allegations are admitted by the Demurrers thereto filed by respondents. Also much of the properties as were sold for the non-payment of taxes were sold at public sale and the same test of value thereby followed as if foreclosed and sold under the certificate.

Respectfully submitted,

O. K. REAVES,
Attorney for Petitioner.